STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of HUSSNI/JOHNSON, Minors.

UNPUBLISHED
November 13, 2014

No. 319881
Calhoun Circuit Court
Family Division
LC No. 2012-001872-NA

Before: RONAYNE KRAUSE, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

Respondent-mother appeals as of right the order terminating her parental rights to the minor children ZJ, JJ, and LH under MCL 712A.19b(3)(c)(*ii*) (other conditions exist that could have caused the child to come within the court's jurisdiction and they have not been rectified), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood child will be harmed if returned to parent). We affirm.

I

Respondent began drinking alcohol in 2011, and according to respondent, she was hospitalized in June of 2012 for mixing prescription medication with alcohol.[1] Less than two weeks later, child protective services visited respondent's home to investigate a report of physical abuse. Respondent's daughter, JJ (born September 2, 1999), claimed that respondent, who had been drinking, choked her during an argument about whether JJ could leave the house. Respondent subsequently told her counselor that sometimes discipline had gone too far with the children, but she never admitted to choking JJ. After the investigation of the choking claim, JJ and respondent's other children, ZJ (born February 1, 1998) and LH (July 29, 2003), were placed in petitioner's care.

The children were returned to respondent's care for a short time in December of 2012, but during that month, respondent failed to submit to any substance screenings and in January of 2013, respondent tested positive for cocaine, marijuana, and hydrocodone. During that same period of time, the caseworker explained that respondent was discharged from counseling for lack of

[1] According to hospital staff, respondent "overdosed." Respondent's children urged her to stop drinking.

attendance, she failed to comply with intake appointments to be immediately reenrolled in counseling, she missed reunification meetings, and she disregarded a safety plan for the children. On January 11, 2013, the children were placed in nonrelative foster care, and because they had missed school and fallen behind in their studies while living with respondent, they were also placed in after school programs. According to the caseworker at the termination hearing, respondent missed 29 of 54 scheduled substance screenings as well as parenting time visits with the children, respondent was unable to verify and maintain consistent employment, and respondent was evicted from her apartment and, for some of the lower court proceedings, lived in a homeless shelter. The caseworker explained that respondent participated in and benefitted from outreach counseling, but when her counselor had surgery in August of 2013, respondent failed to complete an intake appointment to reenroll with another counselor as instructed.

At the time of the termination hearing, the permanency planning goal for ZJ was independent living and the caseworker explained JJ and LJ would be placed for adoption. The trial court found that respondent was discharged from counseling because of lack of attendance, that she failed to consistently attend her substance screenings, and that she failed to acquire stable housing. The trial court also noted that respondent was residing in the shelter at the time of the termination hearing, and found that respondent had a "cavalier attitude" about attending parenting time visitations, which the trial court considered to be "indicative of her motivation" and potential to perform. The trial court further observed that the children had been removed from respondent's care twice during the proceedings, resulting in an "upheaval" in the children's lives and concluded that respondent did not understand "the damaging and substantial impact" these incidents had on them. The trial court found that termination of respondent's parental rights was proper pursuant to MCL 712A.19b(3)(c)(ii), (g), and (j).

Next, the trial court found that termination of respondent's parental rights was in the best interests of the children. The trial court found that respondent loved the children and was bonded to them. However, it further found that "considering their ages and especially considering the length [of time] they ha[d] been in foster care," termination of respondent's parental rights was in the best interests of the children. The trial court found that the record supported that, even if respondent was provided additional time to complete services, "the cycle" that she had demonstrated during the proceeding would continue. The trial court also found that the children's needs were being met in foster care and that they were improving and progressing.

II

Respondent does not challenge the statutory grounds upon which the trial court relied when terminating her parental rights. Rather, on appeal, she only argues that termination of her parental rights was not in the minor children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). We review a trial court's finding that termination is in the minor child's best interests for clear error. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009).

On appeal, respondent argues that the termination order should be reversed because the record was insufficient for the trial court to make a best-interests determination. Specifically, she argues that the trial court improperly failed to consider the likelihood of the children being adopted, that JJ and ZJ did not want to be adopted, that the children did not have "any special

needs that required special care," and that the children were bonded with one another and with her. Respondent cites SCAO Memorandum, *Child's Best Interests in Termination of Parental Rights Proceedings* (August 22, 2013), p 3, to argue that the trial court was required to consider these factors. However, the SCAO memorandum is not an order of the Michigan Supreme Court, and it does not purport to rule on whether a trial court is required to consider certain factors when determining best interests. See *In re Contempt of Henry*, 282 Mich App 656, 678; 765 NW2d 44 (2009) ("a court speaks through its written orders and judgments"). Moreover, the memorandum provides that a trial court "may" consider certain relevant factors when deciding best interests. The word "may" reflects permissive, not mandatory, action. *Manuel v Gill*, 481 Mich 637, 647; 753 NW2d 48 (2008). Further, we reject respondent's argument that, pursuant to *In re Mason*, 486 Mich 142, 164; 782 NW2d 747 (2010), and *In re Mays*, 490 Mich 997, 997; 807 NW2d 304 (2012), the trial court was required to consider the likelihood of the children being adopted when deciding best interests; we find that *In re Mason* and *In re Mays* are not relevant to respondent's arguments on appeal.

Respondent next argues that her strong bond with the children and the sibling relationship weighed against termination of her parental rights. We disagree. Respondent had history of abusing alcohol. JJ and ZJ asked her to stop consuming alcohol, but she refused, even when it caused the children to be removed from her care twice. The children mistrusted respondent because of her failure to make sufficient progress during court proceedings and her lack of commitment—respondent missed or was late to hearings and parenting time visits. Even though the children were removed from respondent's care in June 2012, in part, because of allegations that she had choked JJ, respondent denied throughout the proceeding that she had ever abused the children, and she minimized the incident when she testified at the termination hearing. The record does not support that respondent had a healthy parent-child bond with the children, see *In re CR*, 250 Mich App 185, 196-197; 646 NW2d 506 (2002), rev'd on other grounds *In re Sanders*, 495 Mich 394; ___ NW2d ___ (2014), and although termination could result in the separation of the children, the interest of protecting each individual child from further substance abuse and instability controls. See *In re Olive/Metts*, 297 Mich App at 42.

Respondent also argues that it was in the best interests of the children to provide her with additional time to complete services. Respondent relies on testimony of a counselor that she could be able to be reunified with the children in a short time, but the same counselor also testified that the progress would depend "a whole lot" on respondent and would require respondent to be responsible. Throughout the 18-month proceeding, respondent failed to comply with a majority of the services offered to her, and during the month that the children were placed with her, they fell behind in school. Respondent was told that she needed continued individual counseling, but when sessions ended with one counselor several months before the termination hearing, she failed to resume sessions with another counselor as instructed. Particularly in light of the children's need for permanency and stability, the record does not support that the children could be returned to respondent's care if she was provided with additional time. See *In re VanDalen*, 293 Mich App 120, 141; 809 NW2d 412 (2011).

The trial court did not clearly err by ruling that terminating respondent's parental rights was in the children's best interest. *In re HRC*, 286 Mich App at 459.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens